IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 222 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MUKESHKUMAR C & CO,

Appearance:

1. Criminal Appeal No. 222 of 1991

MR KT DAVE, A.P.P. for Petitioner No. 1

MR BN KESHWANI for Respondent No. 1

..... for Respondent No. 2-3

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 23/01/2003

ORAL JUDGEMENT

1. The State of Gujarat has filed this Appeal u/s.377 Cr.P.C. against the order of sentence passed by the learned Chief Metropolitan Magistrate, Ahmedabad, whereby the learned Magistrate sentenced the respondents - accused and ordered to pay Rs.75/- each i/d to under-go 3 days Simple Imprisonment. The fine was paid on the

same day by all the accused.

2. The complaint is dated 18.10.1988. As per complaint all the 3 respondents - accused have committed offence u/s.28 of the Gujarat Unprotected Manual Workers (Regulation of Employment & Welfare) Act, 1979 (for short "the Act"). As per the complaint against all the accused criminal case No.1674/87 was filed before the Court of learned Chief Metropolitan Magistrate on 6.10.1987 for committing breach of Section 12 of the Act in which all the accused were sentenced to pay Rs.600/- on their plea of guilt. Inspite of that they did not get the registration from 6.10.1987 to 12.9.1988, therefore, another complaint being Criminal Case No.3027/88 was filed before the court of learned Chief Metropolitan Magistrate, Ahmedabad on 18.10.1988.

3. Initially, the accused filed an Application Ex.2 before the trial Court u/s.300 Cr.P.C. and pleaded that once they are convicted by the same offence then they cannot be tried again. However, their Application was rejected on 30.8.1990 by the trial Court. It seems that thereafter within a short period all the accused straightway pleaded guilty to the charge on 11.2.1991 on which all the accused were ordered to pay fine of Rs.75/- i/d. to further undergo S.I. for 3 days.

4. At Page : 19 of the Paper Book it makes interesting reading wherein question was put which is as under :

QUESTION :
You have been explained the facts about commission of offence, do you plead guilty or defend the case ?
Answer to the aforesaid question was as under :
ANSWER :
Pleaded guilty u/s.25 of the Act.

5. Below that the order of sentence of fine is passed by the learned Magistrate which is as under :

ORDER :
ALL the three accused are held guilty and order to pay fine of Rs.75/- in-default they will have to undergo 3 days S.I.
Date : 11.2.1989 (sign)
(H. M. BHATT)
C.M.M.,AHMEDABAD.

6. From the facts stated above it is clear that the complaint was filed by the complainant against the respondents - accused for the offence u/s. 28 of the

Act. However, the accused pleaded guilty u/s.25 of the Act. Section 25 of the Act deals with supersession of power. I failed to understand that how the learned trial Judge without applying the mind recorded such plea of guilt. Be that as it may. The impugned order of sentence is still worst. The learned trial Judge found all the 3 accused guilty, but for what offence, he has not stated at all and imposed fine of Rs.75/-. Against such order the State has come in this Appeal for enhancement of sentence. Under the circumstances the impugned order was required to be quashed and set aside as it clearly appears from the record of the case that it was a case of plea bargaining and without application of mind the accused pleaded guilty to the charge for the offence which was not at all there and without recording the finding that the accused are held guilty for which offence the learned trial Judge imposed fine of Rs.75/- against each of the accused.

7. Under the circumstances there would have been no alternative but to set aside the order of conviction and sentence and remanded the matter to the learned Judge for deciding the matter afresh. However, the fact that for committing breach of Section 12 of the Act all the respondents - accused pleaded guilty on 16.10.1987 before the learned Chief Metropolitan Magistrate in Criminal Case No.1674 of 1987 and the complaint was that from 6.10.1987 to 12.9.1988 they have not got registration u/s.12 of the Act. Thus, the offence, if any, alleged to have been committed by the accused way-back in 1987-88 i.e. almost 15 years from today. This Appeal was admitted in 1991 and pending before this Court since last 12 years. Thus, there was hanging sword on the head of the accused. Considering all this aspect and the nature of the offence which is not that serious, therefore, I am of the considered opinion that though the impugned order of conviction and sentence is ex-facie wrong no interference is called for.

Accordingly, this Appeal fails and is dismissed.

Date : January 23, 2003 (B.J.Shethna, J.)
sas